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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 MELANIE HOGAN, individually and on
behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 TICKETMASTER LLC,

22 Defendant.

23 Case No. 2:24-cv-10098-SVW-SK

24 **DEFENDANT'S NOTICE OF**
MOTION AND MOTION TO
TRANSFER PURSUANT TO
28 U.S.C. § 1404(a)

25 Judge: Hon. Stephen V. Wilson
26 Date: March 31, 2025
27 Time: 1:30 p.m. PT
28 Place: Courtroom 10A

1 TO THIS HONORABLE COURT, AND TO PLAINTIFF AND HER
2 ATTORNEYS OF RECORD:

3 **PLEASE TAKE NOTICE** that on March 31, 2025, at 1:30 p.m., or as soon
4 thereafter as this matter may be heard in the above-referenced Court, located at the
5 Central District of California, First Street Courthouse, 350 W. 1st Street, Courtroom
6 10A, 10th Floor, Los Angeles, California 90012, Defendant Ticketmaster L.L.C.
7 (“Ticketmaster”) will and hereby does move to transfer this case brought by Plaintiff
8 Melanie Hogan (“Plaintiff”) to the United States District Court for the Northern
9 District of Illinois, pursuant to 28 U.S.C. § 1404(a).

10 As set forth in the accompanying Memorandum of Points and Authorities,
11 Plaintiff’s claim for relief under the Illinois Ticket Sale and Resale Act (the “Act”)
12 is based on her assertion that she used Ticketmaster’s website to purchase three
13 resale tickets for an event at the United Center in Chicago, Illinois. However, by
14 signing into her Ticketmaster account on multiple occasions and purchasing those
15 and other tickets, Plaintiff affirmatively agreed to Ticketmaster’s Terms of Use
16 (“Terms”), which include a valid and enforceable forum-selection clause identifying
17 the State of Illinois as the exclusive judicial forum for claims under the Act. Under
18 *Atlantic Marine Construction Co. v. U.S. District Court for the Western District of*
19 *Texas*, 571 U.S. 49, 63 (2013), a forum-selection clause should be enforced absent
20 “extraordinary circumstances.” No such extraordinary circumstances exist here, and
21 this case should be transferred to the Northern District of Illinois under § 1404(a).

22 This Motion is made following the conference of counsel pursuant to L.R. 7-3.
23 On January 7, 2025, Ticketmaster’s counsel emailed Plaintiff’s counsel, asking to
24 meet and confer. On January 9, 2025, counsel for Ticketmaster and Plaintiff held a
25 telephone conference and discussed the transfer issue. Ticketmaster’s counsel
26 explained that it was filing this Motion on the basis of a forum-selection clause, and
27 offered to send a copy of the Terms, including the forum-selection clause, to
28 Plaintiff’s counsel. Later that day, Ticketmaster’s counsel emailed the Terms to

1 Plaintiff's counsel. On January 13, 2025, Plaintiff's counsel emailed Ticketmaster's
2 counsel confirming they had reviewed the forum-selection clause and intended to
3 oppose this Motion on the ground that the clause is unenforceable. This Motion is
4 based on this Notice of Motion and Motion, the accompanying Memorandum of
5 Points and Authorities in support thereof, and the concurrently-filed declarations of
6 Alicia Jovais, Kimberly Tobias, Travis Cook, John Taylor, and George Yue,
7 including any exhibits thereto, and upon such further oral argument and
8 documentary evidence as may be presented at the time of hearing.

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Respectfully submitted,

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LATHAM & WATKINS LLP

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Dated: January 17, 2025

By /s/ Gary Feinerman
Gary Feinerman

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*Attorneys for Defendant
Ticketmaster L.L.C.*

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1 **I. INTRODUCTION**

2 Plaintiff Melanie Hogan (“Plaintiff”) filed this suit against Defendant
3 Ticketmaster L.L.C. (“Ticketmaster”) in the wrong judicial forum. Under the valid
4 and enforceable forum-selection clause in Ticketmaster’s Terms of Use (“Terms”)—
5 which Plaintiff affirmatively accepted on multiple occasions—Plaintiff agreed to
6 submit to the jurisdiction of the State of Illinois for any litigation regarding the
7 alleged resale of any tickets for events in Illinois. Plaintiff’s allegations indisputably
8 regard the resale of tickets for an event in Illinois, yet Plaintiff filed this suit in the
9 Central District of California.

10 Settled precedent holds that where “parties have agreed to a valid
11 forum-selection clause, a district court should ordinarily transfer the case [under 28
12 U.S.C. § 1404(a)] to the forum specified in that clause.” *Atl. Marine Constr. Co. v.*
13 *U.S. Dist. Ct. for the W.D. Tex.*, 571 U.S. 49, 62 (2013). “Only under extraordinary
14 circumstances unrelated to the convenience of the parties” should a district court
15 deny such a § 1404(a) motion. *Id.* No extraordinary circumstances exist here.
16 Accordingly, this Court should enforce the parties’ forum-selection clause and
17 transfer this case to the Northern District of Illinois under § 1404(a).

18 **II. FACTUAL BACKGROUND**

19 **A. The Parties**

20 Plaintiff alleges that, at all times material to this suit, she was a citizen and
21 resident of Chicago, Illinois. ECF No. 1 (“Compl.”) ¶ 11. Defendant Ticketmaster
22 is a global ticket sales and distribution company that sells tickets for live events,
23 such as concerts and sports games, through websites, including
24 www.ticketmaster.com. *See id.* ¶ 12.

25 **B. Plaintiff’s Claim**

26 On November 21, 2024, Plaintiff filed this putative class action suit, which
27 alleges that Ticketmaster unlawfully resold tickets to Illinois amusement events at
28 above face-value prices in violation of the Illinois Ticket Sale and Resale Act, 815

1 ILCS 414/1 *et seq.* (the “Act”). Specifically, Plaintiff alleges that on October 9,
2 2024, she purchased through Ticketmaster three tickets to *Nick Cannon Presents: Wild ‘n’ Out* at the United Center in Chicago at a price exceeding their face value.
3 Compl. ¶¶ 11, 34. The Act makes it unlawful to sell tickets to athletic events,
4 entertainment events, “or any other amusement for a price more than the price
5 printed upon the face of said ticket[.]” 815 ILCS 414/1.5(a). However, the Act
6 carves an exception that allows qualifying brokers, resellers, and internet website
7 operators, such as Ticketmaster, to resell tickets at above face value if they have
8 “adopted a procedure for the binding resolution of consumer complaints by an
9 independent, disinterested third party[.]” *Id.* 414/1.5(b)(1)(F)(iii); *see also id.*
10 414/1.5(e)(6) (applying exception to internet website operators).

11 Plaintiff’s central allegation is that Ticketmaster does not qualify for this
12 exception because, starting on July 2, 2021, it began using arbitration provider New
13 Era ADR to resolve consumer disputes. Compl. ¶ 3. As Plaintiff sees it, New Era
14 ADR is not an independent and disinterested third-party dispute resolution provider
15 within the meaning of 815 ILCS 414/1.5(b)(1)(F)(iii). *Id.* ¶¶ 3, 6. It follows,
16 according to Plaintiff, that Ticketmaster is not exempt from the Act and therefore
17 that it violated the statute in connection with her ticket purchases. *Id.* ¶¶ 6–7. In
18 addition, Plaintiff seeks to certify a nationwide class and an Illinois subclass of
19 individuals who were allegedly overcharged by Ticketmaster for resale tickets to
20 Illinois-based amusement events. *Id.* ¶¶ 22–23.

21 **C. Plaintiff’s Sign-Ins and Purchases on Ticketmaster’s Website**

22 Ticketmaster’s records confirm that Plaintiff has been a Ticketmaster account
23 holder since February 4, 2016. *See Decl. of T. Cook, filed in Supp. of Mot. to*
24 *Transfer (“Cook Decl.”)* ¶ 4.¹ Since July 21, 2021, the start of the alleged class
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26
27 ¹ In resolving motions to transfer based on a forum-selection clause, the Court may
28 consider facts beyond the pleadings that are pertinent to the clause’s terms and
application to the plaintiff. *See Cream v. N. Leasing Sys., Inc.*, 2015 WL 4606463,
at *4 (N.D. Cal. July 31, 2015).

1 period, Plaintiff has signed into her Ticketmaster account at least ten times. Decl.
2 of G. Yue in Supp. of Mot. to Transfer (“Yue Decl.”) ¶ 5. Ticketmaster’s records
3 further confirm that Plaintiff used Ticketmaster’s website to purchase tickets to two
4 events in Illinois during the alleged class period. Decl. of J. Taylor in Supp. of Mot.
5 to Transfer (“Taylor Decl.”) ¶¶ 4–6.

6 **D. Plaintiff’s Acceptance of Ticketmaster’s Terms of Use**

7 **1. *The Terms of Use***

8 To sign in and make purchases on Ticketmaster’s website, users, including
9 Plaintiff, must agree to Ticketmaster’s Terms. Decl. of K. Tobias in Supp. of Mot.
10 to Transfer (“Tobias Decl.”) ¶¶ 5–10.

11 Since 2011, Ticketmaster’s Terms have included a provision whereby users
12 expressly agree to submit claims against Ticketmaster to binding arbitration.
13 *Id.* ¶ 11. The current Terms, operative since July 2, 2021, require users to submit
14 their disputes with Ticketmaster to individual arbitration and to waive any right to
15 bring or participate in a class or representative action:

16 **YOU AND WE EACH AGREE THAT, EXCEPT AS PROVIDED
17 BELOW, ANY DISPUTE, CLAIM, OR CONTROVERSY
18 RELATING IN ANY WAY TO THE TERMS, YOUR USE OF
19 THE SITE, OR PRODUCTS OR SERVICES SOLD,
20 DISTRIBUTED, ISSUED, OR SERVICED BY OR THROUGH
21 US—IRRESPECTIVE OF WHEN THAT DISPUTE, CLAIM, OR
22 CONTROVERSY AROSE—WILL BE RESOLVED SOLELY BY
23 BINDING, INDIVIDUAL ARBITRATION AS SET FORTH IN
24 THE TERMS, RATHER THAN IN COURT. YOU AND WE
25 THEREBY EACH AGREE TO WAIVE ANY RIGHT TO A
26 JURY TRIAL, AND AGREE THAT YOU AND WE MAY BRING
27 CLAIMS AGAINST EACH OTHER ONLY IN AN INDIVIDUAL
28 CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER
IN ANY PURPORTED CLASS OR REPRESENTATIVE
PROCEEDING.**

24 *Id.*, Ex. 7.

25 The Terms further specify that “[a]ny arbitration will be administered by New
26 Era ADR in accordance with their Virtual Expedited Arbitration Rules and
27 Procedures, as well as any applicable General Rules and Procedures, except as
28 modified by the Terms,” and provide a link to those Rules and Procedures (the

1 “Rules”). *Id.* The Rules make clear that, like other arbitration providers, “New Era
2 ADR reserves the right to make changes and amendments” to the Rules, and “[i]f
3 the Parties have entered into an arbitration or mediation agreement, the version of
4 the Rules in effect at the time a claim is filed with New Era ADR will govern the
5 arbitration or mediation, unless the Parties mutually agree to another version.” Decl.
6 of A. Jovais in Supp. of Mot. to Transfer (“Jovais Decl.”), Ex. 1, Rule 2(dd)(i–ii).
7 The most recent revision of New Era’s Rules before this case was filed occurred on
8 August 22, 2024. *Id.* ¶ 2.

9 Of particular pertinence here, the Terms also include a forum-selection clause
10 called the “Special Provision Regarding Resale Tickets for Events Located in
11 Illinois.” Tobias Decl. ¶ 12. This clause requires users “to submit to jurisdiction in
12 Illinois” for “any court proceeding” “involving a ticketed event held in Illinois”:

13 Solely for the purpose of complying with the Illinois Ticket Sale and
14 Resale Act, 815 ILCS 414/1.5 et seq., if your dispute regards the resale
15 of a ticket for any event located in the State of Illinois, then the
16 following applies: You may submit any complaint you may have to
17 New Era ADR as an arbitration demand, in accordance with the rules
18 and procedures outlined in this section, and any such claims shall be
19 decided by an independent arbitrator in accordance with the Terms.
20 *Without waiving the agreement to arbitrate or any other terms in this*
21 *Section 17, you also agree to submit to the jurisdiction of the State of*
22 *Illinois for any complaints involving a ticketed event held in Illinois.*
23 For the sake of clarity, your agreement to submit to the jurisdiction of
24 the State of Illinois for any complaint involving a ticketed event held in
25 Illinois does not in any way waive your and our agreement to arbitrate,
26 or the scope of arbitration, but simply means that—for any court
27 proceeding that may take place in conjunction with an arbitration
28 (e.g., a motion to enforce an arbitration award), or in the event the
arbitration agreement is held unenforceable—you agree to submit to
jurisdiction in Illinois. If you have an inquiry regarding a ticket resale
transaction made for any event located in Illinois, please contact us at
550 W. Van Buren Street, 13th Floor, Chicago, Illinois 60607 or (877)
446-9450.

24 *Id.*, Ex. 7 (emphases added).²

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28 ² Ticketmaster reserves all rights to move to compel arbitration after a ruling on this Motion to Transfer, whether the Motion is granted or denied.

1 **2. Plaintiff's Agreement to the Terms**

2 To purchase tickets on Ticketmaster's website, users must agree to the Terms
3 at numerous, distinct times—including at account sign-in and ticket purchase. *Id.*
4 ¶¶ 5–10. As noted above, *see supra* Section II.C., since the start of the alleged class
5 period on July 2, 2021, Plaintiff has signed into her Ticketmaster account at least ten
6 times. Yue Decl. ¶ 5. Ticketmaster's records further confirm that Plaintiff used
7 Ticketmaster's website to purchase tickets to two ticketed events in Illinois during
8 the alleged class period:

- 9 • On August 3, 2022, Plaintiff purchased tickets to *Chris Brown & Lil Baby:*
10 *One Of Them Ones Tour* at the Credit Union 1 Amphitheater in Tinley
11 Park, Illinois. Taylor Decl. ¶ 5.
12 • As alleged in the Complaint, on October 9, 2024, Plaintiff purchased
13 tickets to *Nick Cannon Presents: Wild 'n' Out* at the United Center in
14 Chicago, Illinois. *Id.* ¶ 6; Compl. ¶ 11.

15 a. ***Plaintiff's Agreement to the Terms at Sign-In***

16 In order to take various actions on Ticketmaster's website, users must sign
17 into their accounts and assent to the Terms. Ticketmaster's records demonstrate that
18 Plaintiff has signed in multiple times and saw the current version of the sign-in flow,
19 which has been in place since at least the time of Ticketmaster's last update to the
20 Terms on July 2, 2021. Yue Decl. ¶ 5. Each time Plaintiff signed in, she was notified
21 on the sign-in page that: “By continuing past this page, you agree to the **Terms of**
22 **Use** and understand that information will be used as described in our **Privacy**
23 **Policy.**” *See* Tobias Decl. ¶¶ 5–7, Exs. 1–2. The words “**Terms of Use**” appeared
24 in bold, bright blue, color-contrasting text, immediately above the “**Sign in**” button,
25 and hyperlinked directly to the full text of the Terms:

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Sign In

New to Ticketmaster? [Sign Up](#)

Email

Password
 [SHOW](#)

Remember Me [Forgot Password?](#)

By continuing past this page, you agree to the [Terms of Use](#) and understand that information will be used as described in our [Privacy Policy](#).

[Sign in](#)

See *id.* Plaintiff would have seen this screen each time she signed in on July 8, 2022, August 4, 2022, February 2, 2023, August 29, 2024 (three times), October 9, 2024, and November 20, 2024 (three times). Yue Decl. ¶ 5.

b. *Plaintiff's Agreement to the Terms at Purchase*

In order to complete the purchase of a ticket using Ticketmaster's website, users must assent to the Terms again, checking a box to confirm their agreement. Ticketmaster's records demonstrate that Plaintiff completed at least two purchases using the current purchase flow, which has been active since at least the time of Ticketmaster's last update to the Terms on July 2, 2021. Taylor Decl. ¶¶ 4–6. Each time Plaintiff did so, depending on whether the particular event had special protocols related to COVID-19, Plaintiff would have seen either: (a) "**I have read and agree to the current Terms of Use,**" or (b) "**I have read and agree to the current Terms of Use,**" plus the event's COVID disclosure, as shown in the two excerpts below. Tobias Decl. ¶¶ 8–10 , Exs. 3–6. Either way, the notice required Plaintiff to check a box affirming her agreement to the Terms to make her purchases. The notices appeared in bold font, with the words "**Terms of Use**" in color-contrasting text (hyperlinked to the full text of the Terms), adjacent to the checkbox and immediately above the "Place Order" button:

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I have read and agree to the current [Terms of Use](#).

[Place Order](#)

I have read and agree to the current [Terms of Use](#),
and acknowledge that the Event Organizer is
requiring proof of COVID-19 vaccination to attend
this event. Please check their website for details.
[Learn More](#)

[Place Order](#)

6 *Id.* Plaintiff would have seen one of these screens when she purchased tickets from
7 Ticketmaster on August 3, 2022 and October 9, 2024. Taylor Decl. ¶¶ 4–6.

8 III. LEGAL STANDARD

9 Under federal law, which governs the enforceability of forum-selection
10 clauses, a forum-selection clause is presumptively valid. *Murphy v. Schneider Nat'l*
11 *Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2003). “The party challenging the clause bears
12 a ‘heavy burden of proof’ and must ‘clearly show that enforcement would be
13 unreasonable and unjust[.]’” *Id.* (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407
14 U.S. 1, 15, 17 (1972)). A forum-selection clause is enforced through a motion to
15 transfer under 28 U.S.C. § 1404(a). *Atl. Marine*, 571 U.S. at 59–60.

16 In the typical case not involving a forum-selection clause, a district court
17 considering a § 1404(a) motion must balance private-interest and public-interest
18 factors. *Id.* at 62–63. However, the “calculus changes” when the parties enter a
19 contract with a valid forum-selection clause, which “represents the parties’
20 agreement as to the most proper forum.” *Id.* at 63 (internal quotation marks and
21 citation omitted). The existence of a valid forum-selection clause requires a district
22 court to adjust its usual § 1404(a) analysis in three ways.

23 **First**, the plaintiff’s “choice of forum merits no weight” and the plaintiff bears
24 the burden of establishing that transfer to the bargained-for forum is “unwarranted.”
25 *Greenfruit Avocados, LLC v. Starr Indem. & Liab. Co.*, 2024 WL 4800076, at *2
26 (C.D. Cal. Sept. 12, 2024) (quoting *Atl. Marine*, 571 U.S. at 63). **Second**, a district
27 court “should not consider arguments about the parties’ private interests,” because
28 “[w]hen the parties agree to a forum-selection clause, they waive the right to

1 challenge the preselected forum as inconvenient or less convenient for themselves
2 or their witnesses[.]” *Atl. Marine*, 571 U.S. at 64. **Third**, “if venue is transferred,
3 the original venue’s choice of law rules will not apply.” *Greenfruit Avocados*, 2024
4 WL 4800076, at *2 (citing *Atl. Marine*, 571 U.S. at 64–65).

5 The practical result is that where the parties entered a valid forum-selection
6 clause, “a district court may consider arguments about public-interest factors only.”
7 *Atl. Marine*, 571 U.S. at 64. These factors will “rarely defeat a transfer motion,” so
8 in “all but the most unusual cases, … the interest of justice is served by holding
9 parties to their bargain.” *Id.* at 64, 66 (internal quotation marks omitted).

10 Plaintiff cannot meet her heavy burden of showing that the public-interest
11 factors overcome the forum-selection clause she entered with Ticketmaster. The
12 clause is valid, and no extraordinary circumstances exist that render this one of “the
13 most unusual cases” where a forum-selection clause should not be enforced.

14 **IV. ARGUMENT**

15 In deciding a motion to transfer involving a forum-selection clause, a district
16 court determines whether: (1) the action could have originally been brought in the
17 proposed transferee forum; (2) the clause is mandatory and the plaintiff’s claims fall
18 within the clause’s scope; (3) the clause is valid and enforceable; and (4) the
19 § 1404(a) public-interest factors outweigh the otherwise controlling weight of the
20 clause. *See Quality Office Furnishing, Inc. v. Allsteel, Inc.*, 2017 WL 11662670, at
21 *3, *6–7 (C.D. Cal. June 23, 2017).

22 **A. This Action Could Have Been Brought In The Northern District
23 of Illinois**

24 A court can transfer an action under § 1404(a) only to a judicial district where
25 the action originally could have been brought. *See* 28 U.S.C. § 1404(a). Here, venue
26 is proper in the Northern District of Illinois because a substantial part of the events
27 giving rise to the claim occurred in Illinois. *See* 28 U.S.C. § 1391(b)(2).
28 Specifically, Plaintiff alleges that Ticketmaster violated an Illinois statute by

1 overcharging her for a ticketed event in Chicago, which lies in the Northern District
2 of Illinois. Compl. ¶¶ 1–2, 6–7, 11.

3 **B. Plaintiff Agreed To The Forum-Selection Clause, Which Is
4 Mandatory And Plainly Covers Her Claim**

5 **1. Plaintiff Agreed To Be Bound By The Forum-Selection Clause**

6 By signing into her account and purchasing tickets, Plaintiff affirmatively
7 consented—multiple times—to the forum-selection clause in Ticketmaster’s Terms.
8 Each time Plaintiff signed in, she was notified on the sign-in page that: “By
9 continuing past this page, you agree to the **Terms of Use** and understand that
10 information will be used as described in our **Privacy Policy**.” Tobias Decl. ¶¶ 6–7,
11 Exs. 1–2. The phrase “**Terms of Use**” appeared in bold, bright blue, color-
12 contrasting text, immediately above the “**Sign in**” button, and were hyperlinked
13 directly to the full text of the Terms. *Id.* Likewise, each time Plaintiff purchased
14 tickets, she was required to first click a box, declaring (a) “**I have read and agree
15 to the current Terms of Use**,” or (b) “**I have read and agree to the current Terms
16 of Use**,” plus the event’s COVID disclosure. *Id.* ¶¶ 8–10, Exs. 3–6 . Plaintiff was
17 able to read the Terms by clicking on the words “**Terms of Use**” in bold, bright blue,
18 color-contrasting text (hyperlinked to the full text of the Terms), adjacent to the
19 check box and immediately above the “Place Order” button. *Id.* ¶ 8. By clicking
20 the check box, Plaintiff assented to be bound by the forum-selection clause in
21 Ticketmaster’s Terms.

22 The type of agreement that Plaintiff accepted at the point of purchase is a
23 “clickwrap” agreement, which “requires users to expressly manifest assent to the
24 terms by, for example, clicking an ‘I accept’ button.” *Crawford v. Beachbody, LLC*,
25 2014 WL 6606563, at *3 (S.D. Cal. Nov. 5, 2014). Such an agreement presents the
26 user with a message on her device screen, requiring that she manifest her assent to
27 the terms of the agreement by clicking on an icon; critically, the purchase cannot be
28 completed until the icon is clicked. *Id.* Such “clickwrap” agreements “constitute

1 mutual assent,” and their provisions are valid and enforceable. *See id.*; *Sandler v.*
2 *iStockphoto LP*, 2016 WL 871626, at *2 (C.D. Cal. Feb. 5, 2016) (“Clickwrap
3 agreements have been routinely upheld by circuit and district courts.” (cleaned up));
4 *Moretti v. Hertz Corp.*, 2014 WL 1410432, at *2 (N.D. Cal. Apr. 11, 2014) (“It is
5 sufficient to require a user to affirmatively accept the terms, even if the terms are not
6 presented on the same page as the acceptance button as long as the user has access
7 to the terms of service.” (cleaned up)).

8 Consistent with the holdings of the Ninth Circuit, this Court, and others, either
9 point of Plaintiff’s assent—the purchase page with the checkbox, or the sign-in
10 page—was sufficient to bind Plaintiff to Ticketmaster’s Terms, including the forum-
11 selection clause. *See, e.g., Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 516–17
12 (9th Cir. 2023) (Ticketmaster account creation, sign-in, and purchase pages
13 sufficient to form contract); *Lee v. Ticketmaster L.L.C.*, 817 F. App’x 393, 394–95
14 (9th Cir. 2020) (Ticketmaster sign-in and purchase pages sufficient to form
15 contract); *Hansen v. Ticketmaster Ent., Inc.*, 2020 WL 7319358, at *3–5 (N.D. Cal.
16 Dec. 11, 2020) (Ticketmaster sign-in page sufficient to form contract); *Ajzenman v.*
17 *Off. of Comm’r of Baseball*, 2020 WL 6031899, at *2, *4 (C.D. Cal. Sept. 14, 2020)
18 (Ticketmaster sign-in and purchase pages sufficient to form contract).

19 **2. *The Forum-Selection Clause Is Mandatory, And Plaintiff’s***
20 ***Claim Falls Within Its Scope***

21 Courts “apply federal contract law to interpret the scope of a forum-selection
22 clause[.]” *Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086 (9th Cir.
23 2018). “In interpreting a forum-selection clause under federal law,” the “general
24 principles for interpreting contracts” control. *Id.* (citation omitted). A
25 straightforward application of these principles confirms that the forum-selection
26 clause in Ticketmaster’s Terms is mandatory and covers Plaintiff’s claim.

27 The forum-selection clause is mandatory because it contains mandatory
28 language designating the chosen forum—Illinois—as the exclusive judicial forum

1 for litigation related to “the resale of a ticket for any event located in the State of
2 Illinois”:

3 Without waiving the agreement to arbitrate or any other terms in this
4 **Section 17, you also agree to submit to the jurisdiction of the State of**
Illinois for any complaints involving a ticketed event held in Illinois.
5 **For the sake of clarity, your agreement to submit to the jurisdiction**
of the State of Illinois for any complaint involving a ticketed event
6 **held in Illinois does not in any way waive your and our agreement to**
arbitrate, or the scope of arbitration, but simply means that—for any
7 court proceeding that may take place in conjunction with an arbitration
(e.g., a motion to enforce an arbitration award), or in the event the
arbitration agreement is held unenforceable—**you agree to submit to**
8 **jurisdiction in Illinois.**

9 Tobias Decl. ¶ 12, Ex. 7. “To be mandatory, a clause must contain language that
10 clearly designates a forum as the exclusive one.” *Bowman v. Kona Univ., Inc.*, 2013
11 WL 3819674, at *1 (C.D. Cal. July 23, 2013) (quoting *N. Cal. Dist. Council of*
12 *Laborers v. Pittsburg–Des Moines Steel Co.*, 69 F.3d 1034, 1037 (9th Cir. 1995)).
13 Here, the clause unambiguously designates Illinois as the exclusive judicial forum
14 not once, but twice.

15 It is also clear that Plaintiff’s claim under the Act falls within the forum-
16 selection clause’s scope. As noted, the clause covers “any complaints involving a
17 ticketed event held in Illinois.” Tobias Decl. ¶ 12, Ex. 7. The clause makes clear
18 that it

19 does not in any way waive [the user’s] and our agreement to arbitrate,
20 or the scope of arbitration, but simply means that—for any court
proceeding that may take place in conjunction with an arbitration (e.g.,
21 a motion to enforce an arbitration award), or in the event the arbitration
agreement is held unenforceable—you agree to submit to jurisdiction
22 in Illinois.

23 *Id.* Plaintiff’s claim—which alleges that Ticketmaster violated the Act in connection
24 with her purchase of resale tickets for an event in Illinois, and that the Act’s
25 exemption for brokers and resellers that “adopted a procedure for the binding
26 resolution of consumer complaints by an independent, disinterested third party,” 815
27 ILCS 414/1.5(b)(1)(F)(iii), does not apply to Ticketmaster—plainly falls within the
28 clause’s scope.

1 **C. The Forum-Selection Clause Is Valid And Enforceable**

2 Because Plaintiff agreed to the forum-selection clause in Ticketmaster's
3 Terms, it is valid and enforceable unless she can demonstrate: (1) "the inclusion of
4 the clause in the agreement was the product of fraud or overreaching"; (2) "the party
5 wishing to repudiate the clause would effectively be deprived of h[er] day in court
6 were the clause enforced"; or (3) "enforcement would contravene a strong public
7 policy of the forum in which suit is brought." *Murphy*, 362 F.3d at 1140 (quoting
8 *Richards v. Lloyd's of London*, 135 F.3d 1289, 1294 (9th Cir. 1998) (en banc)).
9 Plaintiff cannot demonstrate any of these three things. And Plaintiff's anticipated
10 reliance on *Heckman v. Live Nation Entertainment, Inc.*, 120 F.4th 670 (9th Cir.
11 2024), is misplaced.

12 **1. The Forum-Selection Clause Was Not A Product Of Fraud Or**
13 **Overreaching**

14 To establish that the forum-selection clause should not be enforced due to
15 fraud or overreaching,³ Plaintiff must show that the forum-selection clause itself, as
16 opposed to the entire contract, is the product of fraud or overreaching. *Crawford*,
17 2014 WL 6606563, at *5 n.3 (citing *Scherk v. Alberto-Culver Co.*, 417 U.S. 506,
18 519 n.14 (1974)). Plaintiff cannot meet that burden. She agreed—multiple times—to
19 a forum-selection clause as a condition of signing into her account and purchasing
20 tickets on Ticketmaster's website. Yue Decl. ¶ 5; Taylor Decl. ¶¶ 4–6. She was not
21 forced to sign into her account or to purchase tickets on Ticketmaster's website. See
22 *Oberstein v. Live Nation Ent., Inc.*, 2021 WL 4772885, at *9 (C.D. Cal. Sept. 20,
23 2021) (finding “a low level” of oppression or surprise related to the Terms because
24 “Plaintiffs could choose not to attend these specific recreational events or purchase
25 tickets on the secondary market”), aff’d, 60 F.4th 505 (9th Cir. 2023). Further, to

26
27 ³ Courts use coercion and overreach interchangeably. See, e.g., *James Dar, LLC v. OJCommerce, LLC*, 2021 WL 4099450, at *4 (C.D. Cal. Sept. 9, 2021). Both contemplate “conduct short of fraud, involving ‘undue influence’ or ‘overweening bargaining power.’” *Id.* (quoting *Bremen*, 407 U.S. at 12).

1 the extent Plaintiff contends that Ticketmaster's Terms are non-negotiable, courts
2 have repeatedly rejected that argument as a basis to invalidate a forum-selection
3 clause. *See Murphy*, 362 F.3d at 1141 (“To decline enforcement of a forum selection
4 merely on the showing of non-negotiability and power difference ... would disrupt
5 the settled expectations of the parties.”); *Crawford*, 2014 WL 6606563, at *5
6 (“Plaintiff’s argument that the Terms and Conditions was not negotiable cannot
7 rebut the presumption in favor of the forum selection clause.” (citation omitted)).
8 And if Plaintiff did not read the Terms or the clause, her failure to do so would not
9 establish fraud or undue influence. *See Sandler*, 2016 WL 871626, at *2 (citing
10 *Guadagno v. E*Trade Bank*, 592 F. Supp. 2d 1263, 1271 (C.D. Cal. 2008)).

11 **2. *The Forum-Selection Clause Does Not Deprive Plaintiff Of***
12 ***Her Day In Court***

13 Plaintiff would not be deprived of her day in court if the forum-selection
14 clause is enforced. The kind of hardship that rises to the level of depriving a plaintiff
15 of her day in court requires a claim of “grave difficulty and inconvenience”—for
16 instance, where “physical or other such difficulties, in addition to financial hardship,
17 are present.” *Am. Guard Servs., Inc. v. Mgmt. Info. Tech. Corp.*, 2011 WL 2940407,
18 at *2 (C.D. Cal. July 21, 2011) (citation omitted); *cf. Walker v. Carnival Cruise*
19 *Lines*, 107 F. Supp. 2d 1135, 1141–42 (N.D. Cal. 2000) (finding that enforcing a
20 forum-selection clause would deprive financially limited quadriplegic plaintiffs of
21 their day in court due to “degree, combination, [and] cumulative effect of severe
22 physical *and* economic disabilities” which they faced (emphasis in original)).
23 Plaintiff does not allege any grave difficulty that would prevent her from litigating
24 in the Northern District of Illinois.

25 **3. *The Forum-Selection Clause Does Not Violate The Public***
26 ***Policy Of This Forum***

27 Nor would enforcing the forum-selection clause violate “any strong public
28 policy” of California. Indeed, “absent a total foreclosure of remedy in the transferee

1 forum, courts tether their policy analysis to the forum selection clause itself, finding
2 the forum selection clause unreasonable only when it contravenes a policy
3 specifically related to venue.” *LaCross v. Knight Transp., Inc.*, 95 F. Supp. 3d 1199,
4 1205–06 (C.D. Cal. May 28, 2015) (citation omitted). So unless Plaintiff can show
5 that her “remedy is altogether foreclosed and unavailable in the transferee court,”
6 this Court should “not consider policy arguments unrelated to venue.” *Id.* at 1206
7 (citations omitted).

8 Plaintiff cannot make that showing. This is not, for example, an exceptional
9 case where transferring this dispute to the agreed-upon forum would waive a
10 procedural or substantive right available to Plaintiff in this District. *See, e.g., Doe 1*
11 *v. AOL LLC*, 552 F.3d 1077, 1081–84 (9th Cir. 2009) (refusing to transfer case to
12 the selected forum—Virginia state court—because it did not permit the plaintiffs to
13 pursue a consumer class action and remedies under California consumer law). To
14 the contrary, transferring Plaintiff’s suit to the Northern District of Illinois would not
15 deprive her of any procedural or substantive right.

16 **4. *The Heckman Decision Does Not Foreclose Enforcement Of***
17 ***The Forum-Selection Clause***

18 Based on the parties’ meet-and-confer efforts, Ticketmaster understands that
19 Plaintiff intends to argue that the forum-selection clause is unenforceable under
20 *Heckman v. Live Nation Entertainment, Inc.*, 120 F.4th 670 (9th Cir. 2024). In that
21 case, the Ninth Circuit held that the *arbitration* provisions in a *superseded* March 2,
22 2022 version of the New Era Rules were unenforceable under California
23 unconscionability law. *See id.* at 683–86. *Heckman* did not address Ticketmaster’s
24 forum-selection clause. Although Plaintiff bears the burden of establishing the
25 unenforceability of the forum-selection clause, *see LaCross*, 95 F. Supp. 3d at 1203,
26 Ticketmaster briefly addresses *Heckman* with the hope of avoiding an unnecessary
27 dispute about a case addressing a different provision of the Terms and an outdated
28 version of the New Era Rules.

1 As an initial matter, *Heckman* said nothing about the forum-selection clause
2 in the “Special Provision Regarding Resale Tickets for Events Located in Illinois”
3 of the Terms. Instead, *Heckman* primarily concerned provisions of the New Era
4 Rules governing mass arbitrations. The Terms’ forum-selection clause, which
5 requires users to “submit to jurisdiction in Illinois” for “any *court* proceeding that
6 may take place in conjunction with an arbitration” related to events in Illinois, such
7 as a motion to compel arbitration, has nothing to do with the New Era Rules. *See*
8 Tobias Decl. ¶ 12, Ex. 7.

9 Even if the New Era Rules were somehow relevant to the enforceability of the
10 forum-selection clause, *Heckman* addressed the March 2, 2022 version of the New
11 Era Rules. *Heckman v. Live Nation Ent., Inc.*, 686 F. Supp. 3d 939, 959 n.14 (C.D.
12 Cal. 2023), *aff’d*, 120 F.4th 670 (9th Cir. 2024). After the district court decision in
13 *Heckman* on August 10, 2023, New Era updated its Rules—including to address the
14 specific issues raised in *Heckman*—on August 21, 2023, May 1, 2024, and August
15 22, 2024. Jovais Decl. ¶¶ 2–3, Exs. 1–4.⁴ It is the amended New Era Rules, not the
16 version at issue in *Heckman*, that apply to Plaintiff’s claim. When Plaintiff
17 purchased the tickets that form the basis of her Complaint on October 9, 2024, the
18 Terms conspicuously hyperlinked to the New Era Rules effective as of August 22,
19 2024.

20 In any event, as noted, the forum-selection clause’s selection of an Illinois
21 *judicial* forum for any court proceedings arising from purchases of tickets to events
22 in Illinois is completely unrelated to the New Era Rules. If Plaintiff wishes to
23 challenge the validity of the updated version of the New Era Rules, she can do so in
24 opposing a motion to compel arbitration if Ticketmaster chooses to file one after the
25
26

27 ⁴ As just one example, while *Heckman* faulted the March 2, 2022 version of the New
28 Era Rules for not explicitly providing for adequate discovery, the current New Era
Rules set forth a detailed process for discovery and make clear that the discovery
process applies to all types of arbitration. *See* Jovais Decl., Ex. 1, Rules 6(a)(viii)(2),
2(o)(iii).

1 present motion is resolved.

2 **D. Section 1404(a)'s Public-Interest Factors Support Transfer And,**
3 **At A Minimum, Do Not Overcome The Forum-Selection Clause**

4 As noted, only in an “unusual” or “exceptional” case will the public-interest
5 factors overcome the forum designated by a valid forum-selection clause. *Atl.*
6 *Marine*, 571 U.S. at 60, 64. The public-interest factors considered under § 1404(a)
7 include: “(1) the local interest in the lawsuit; (2) the court’s familiarity with the
8 governing law; (3) the burden on local courts and juries; (4) congestion in the court;
9 and (5) the costs of resolving a dispute unrelated to a particular forum.” *Bernal v.*
10 *Kohl's Corp.*, 2023 WL 8008977, at *5 (C.D. Cal. Nov. 17, 2023) (citation omitted).
11 None of those factors overcomes the forum-selection clause that Plaintiff agreed to
12 in Ticketmaster’s Terms; to the contrary, they favor transfer.

13 The first, second, and third factors favor transfer. The Northern District of
14 Illinois is more familiar than the Central District of California with applying and
15 interpreting Illinois law. Moreover, Illinois has a far stronger interest than
16 California, and an Illinois court has a far stronger interest than a California court, in
17 handling a suit brought under an Illinois statute by a person who was an Illinois
18 citizen at all relevant times concerning a ticketed event held in Illinois, even if the
19 suit begins and ends with a motion to compel arbitration. *See Metz v. U.S. Life Ins.*
20 *Co. in City of N.Y.*, 674 F. Supp. 2d 1141, 1148–49 (C.D. Cal. 2009) (holding that
21 public-interest factors supported transfer to New York of suit alleging violation of
22 New York business law involving insurance policies delivered to New York
23 policyholders, noting that New York has “significant interest in interpreting its own
24 laws” and protecting New York residents).

25 The fourth factor, court congestion, is neutral. There are currently 65,686
26 cases pending in the Central District of California, which has 28 active district
27 judges, while there are 58,128 cases pending in the Northern District of Illinois,
28

1 which has 22 active district judges.⁵ Both districts have a large urban center and
2 approximately the same case load per judge.

3 The final factor—costs associated with resolving a dispute unrelated to the
4 forum—is also neutral. Although Ticketmaster maintains its principal place of
5 business in California, Plaintiff seeks relief under Illinois law concerning events that
6 transpired in the Northern District of Illinois.

7 Because none of the five public-interest factors weigh against transfer, while
8 three strongly support transfer, this case does not present the “extraordinary”
9 circumstances demanded by *Atlantic Marine* to “defeat a transfer motion” and
10 override a valid forum-selection clause. *KMS, LLC v. Major League Trucking, Inc.*,
11 2023 WL 5333784, at *4 (C.D. Cal. July 25, 2023) (citing *Atl. Marine*, 571 U.S. at
12 52).

13 **V. CONCLUSION**

14 The Court should transfer this case to the Northern District of Illinois.

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23 ⁵ See Lex Machina, “U.S. District Court for the Central District of California” (last
24 visited Jan. 6, 2025) (detailing pending caseload); Lex Machina, “U.S. District Court
25 for the Northern District of Illinois” (last visited Jan. 6, 2025) (detailing pending
case load); “Biographical Directory of Article III Federal Judges, 1789–Present,”
26 Federal Judicial Center, <https://www.fjc.gov/history/judges/search/advanced-search>
27 (last visited Jan. 15, 2025) (follow hyperlink; under “Enter Search Criteria,” select
28 “Court” and check “Central District of California”; under “Enter Search Criteria,”
select “Limit to Sitting Judges,” and check “Active Judges”; repeat same process for
“Northern District of Illinois; listing 28 active judges in Central District of
California, and 22 active judges in Northern District of Illinois, not counting Judge
Dow, who has retained his commission while on assignment as Counselor to the
Chief Justice).

1 Dated: January 17, 2025

Respectfully submitted,

2 LATHAM & WATKINS LLP

3 By /s/ Gary Feinerman
4 Gary Feinerman

5 *Attorneys for Defendant*
6 *Ticketmaster L.L.C.*

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CERTIFICATE OF COMPLIANCE

2 The undersigned, counsel of record for Defendant, Ticketmaster L.L.C.,
3 certifies that this brief contains 5,552 words and 17 pages, which complies with the
4 word limit of L.R. 11-6.1 and the page limit set by court order dated December 5,
5 2024 (Dkt. 9).

Dated: January 17, 2025

/s/ Gary Feinerman

Gary Feinerman